

Attorney Docket No. 05725.0844
Application No.: 09/820,858

REMARKS

I. Status of the Claims

Claims 1-152 are pending in the application. Claims 10-12, 21-23, 27, 28, 30, 32, 34, 36, and 49-150 have been withdrawn. Claims 1, 6, and 7 have been amended. Claims 31, 33, 151, and 152 have been cancelled. Claims 1-9, 13-20, 24-26, 29, 35, and 37-48 remain for examination.

Applicants wish to thank the Examiner for the courtesy of an interview on September 13, 2004. At the interview the Applicants' representative discussed all of the rejections of record. The instant amendments and response reflect the substance of the interview. As discussed at the interview, solely in order to advance prosecution, the term "derivative" has been deleted from the claims and the Applicants have canceled claims 151 and 152. At the interview the Applicants' representative also explained why the proviso of claim 1 over comes the rejections of record.

II. Rejection under 35 U.S.C. § 112, second paragraph

Claims 6-9, 31, and 33 are rejected under 35 U.S.C. § 112, second paragraph for indefiniteness. (*Office Action* at pp. 2-5.) Applicants respectfully traverse this rejection.

The Examiner continues to reject claims 6, 7, and 31 based on the use of the word "derivative." Although Applicants continue to respectfully disagree, to expedite prosecution, Applicants have amended claims 6 and 7 to delete the word "derivative." Claim 6 now recites "polysaccharide polymers comprising at least two quaternary ammonium groups," which is similar language to that of the other groups listed in claim

Attorney Docket No. 05725.0844
Application No.: 09/820,858

6. Similarly, claim 7 now recites "cationic starches" and "cationic guar gums." Claims 31 and 33 have been cancelled.

Applicants reserve the right to prosecute the claims as originally filed in a continuation application.

Accordingly, Applicants respectfully request that this rejection be withdrawn.

III. Claim Rejections under 35 U.S.C. § 102

Claims 1-9, 16, 17, 19, 20, 24-26, 29, 31, 33, 35, 45, 46, and 47 are rejected under 35 U.S.C. is § 102(b) as anticipated by U.S. Patent No. 5,597,811 ("Gruber"). (*Office Action* at pp. 5-6.) Applicants respectfully traverse this rejection.

The Examiner states that "Gruber teaches a composition comprising water-soluble polyglucosamine derivatives." (*Id.* at p. 5.)

Applicants respectfully maintain that one must pick and choose from isolated passages in Gruber to arrive at the claimed invention, which is contrary to the standard required to establish anticipation. *In re Arkley*, 455 F.2d 586, 587 (CCPA 1972); see also M.P.E.P. § 706.02(a) ("For anticipation under 35 U.S.C. 102, the reference must teach every aspect of the claimed invention either explicitly or impliedly.").

Nonetheless, to expedite prosecution, Applicants have amended claim 1 to recite "if the at least one compound comprising at least one C₅ to C₇ saccharide unit is chosen from polysaccharides, then the amino groups are unsubstituted." Support for this amendment can be found in the specification at p. 17, lines 4-5, which states that the amino group can be chosen from unsubstituted groups.

Attorney Docket No. 05725.0844
Application No.: 09/820,858

Because Gruber teaches a composition that comprises polyglucosamine derivatives and does not describe a composition comprising at least one compound comprising at least two quaternary ammonium groups and at least one compound comprising at least one C₅ to C₇ polysaccharide where the amino groups are unsubstituted, Gruber does not anticipate claim 1 as amended.

Accordingly, Applicants respectfully submit that the rejection under 35 U.S.C. § 102 has been overcome and request that the rejection be withdrawn.

IV. Claim Rejections under 35 U.S.C. § 103

Dunlop, Gruber and Yoshihara

Claims 1-9, 13-20, 24-26, 29, 31, 35, and 37-48 are rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Publication No. 2002/0102228 ("Dunlop") in view of Gruber, and further in view of U.S. Patent No. 5,332,581 ("Yoshihara"). (*Office Action* at pp. 6-8.) Applicants respectfully traverse this rejection.

The Examiner states that Dunlop's compositions encompass "most aspects of the claimed invention" except for the heat activation step. (*Id.* at p. 7.) Thus, the Examiner relies on Yoshihara for teaching a heat activation step. (*Id.*) The Examiner also relies on Gruber for disclosing a composition that comprises glucosamine and polyquaternium-10. (*Id.*)

As discussed above, Gruber teaches polyglucosamine derivatives. Claim 1 has been amended to proviso out C₅ to C₇ polysaccharides where the amino groups are unsubstituted.

Attorney Docket No. 05725.0844
Application No.: 09/820,858

To establish a *prima facie* case of obviousness, "all the claim limitations must be taught or suggested by the prior art." (M.P.E.P. § 2143.03.) Because Gruber teaches derivatives of polyglucosamines, which were the subject of a proviso in amended claim 1, the cited references do not teach each and every limitation of claim 1 as amended. Accordingly, Applicants respectfully submit that a *prima facie* case has not been established and request that the rejection be withdrawn.

Dunlop and Rath

Claims 151 and 152 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publication No. 2002/0102228 ("Dunlop") in view of U.S. Patent No. 5,993,792 ("Rath"). (*Office Action* at pp. 8-9.) Applicants respectfully traverse this rejection.

The Examiner asserts that Dunlop teaches hair conditioning shampoo compositions but "fails to teach how the product is packaged." (*Id.*) Thus, the Examiner relies on Rath for disclosing "packing hair products as kits." (*Id.*)

Applicants respectfully disagree that Dunlop and Rath teach the claimed kits. Nonetheless, to expedite prosecution, Applicants have cancelled claims 151 and 152. Accordingly, this rejection is now moot.

Gruber and Applicants' specification

Claims 14, 15, and 39-44 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Gruber in view of applicant's allegedly admitted prior art. (*Office Action* at pp. 9-10.) Applicants respectfully traverse this rejection.

Attorney Docket No. 05725.0844
Application No.: 09/820,858

The Examiner states that Gruber teaches "hair care compositions comprising polyglucosamine derivatives." (*Id.* at p. 9.) As discussed above, however, claim 1 has been amended to proviso out C₅ to C₇ polysaccharides where the amino groups are unsubstituted.

Accordingly, Applicants respectfully submit that a *prima facie* case has not been established and request that the rejection be withdrawn.

V. Conclusion

In view of the foregoing remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

By: _____



Maria T. Bautista
Reg. No. 52,516

Date: October 4, 2004